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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	**CIVIL NO. 07-CV-02178 W (AJB)** **CLASS ACTION** **FIRST AMENDED COMPLAINT FOR COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, DISGORGEMENT OF PROFITS & CIVIL PENALTIES** **1. Unlawful Deductions of Earned Wages In Violation of Labor Code §§ 204 & 221;** **2. Failure to Pay Overtime In Violation of Labor Code §§ 510 & 1194;** **3. Failure to Provide Meal Breaks, Or Compensation in Lieu Thereof (Labor Code §§ 226.7, 512; Cal. Code Regs., Title 8 § 11040);** **4. Failure to Provide Rest Periods, Or Compensation in Lieu Thereof (Labor Code § 226.7; Cal. Code Regs., Title 8 § 11040);**

5. Failure to Reimburse for Reasonable Business Expenses (Labor Code § 2802);
6. Failure to Provide Properly Itemized Wage Statements (Labor Code § 226, 226.3);
7. Failure to Pay Compensation at Time of Termination In Violation of Labor Code §§ 201-203;
8. Unlawful and Unfair Business Practices (Business & Professions Code § 17200 *et seq.*);
9. Labor Code Private Attorney General Act of 2004 (Labor Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

Plaintiff, PHILIP J. MARTINET, on behalf of himself, all others similarly situated, and on behalf of the general public, alleges causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES

1. Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), is a competent adult who resides in the City of San Diego, County of San Diego, State of California. From his date of hire, at or around July 1, 2007 to until his date of separation of employment at or around August 18, 2007, PLAINTIFF was employed as a non-exempt, hourly employee by Defendant SPHERION ATLANTIC ENTERPRISES LLC in the County of San Diego, State of California.

2. PLAINTIFF is informed and believes that Defendant SPHERION ATLANTIC ENTERPRISES LLC is a Delaware limited liability company with its principal place of business in Fort Lauderdale, Florida. At all times mentioned herein, Defendant SPHERION ATLANTIC ENTERPRISES LLC was doing business in the State of California through its ownership and operation of numerous recruiting and staffing offices throughout California, as well as recruiting and employing thousands of California employees. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, SPHERION ATLANTIC ENTERPRISES LLC

employed PLAINITFF and exercised control over PLAINTIFF's wages, hours and working conditions.

3. PLAINTIFF does not know the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

4. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitiously named defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. PLAINTIFF will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

5. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining co-defendant, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment. PLAINTIFF is further informed and believes that each co-defendant, by and through its officers, directors or managing agents ratified, authorized and approved, expressly or implicitly, all of the conduct alleged herein.

6. When in this Complaint reference is made to any act of the "DEFENDANT," such shall be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants named in this lawsuit committed or authorized such acts, or failed and omitted to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of the Defendants and did so while acting within the scope of their employment or agency.

7. When in this Complaint reference is made to any act by a "DEFENDANT" or "Defendants" or "co-defendants," such allegations and reference shall also be deemed to mean the acts and failures to act of each of the named Defendants acting individually, jointly and severally.

JURISDICTION AND VENUE

8. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

9. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C.S. § 1332(d).

10. Venue as to each Defendant is proper in this judicial district. DEFENDANT'S actionable and unlawful employment practices as to PLAINTIFF occurred in the County of San Diego, State of California.

STATUTORY AND REGULATORY BACKGROUND

A. California Labor Code Sections 201 through 203

11. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

B. California Labor Code Sections 218, 218.5 & 218.6

12. Labor Code Section 218 provides a private right of action for employees to sue directly for any wages or penalty due to him/her under this article of the Labor Code. Labor Code Sections 218.5 and 218.6 provide for the recovery of attorneys' fees, costs and pre-judgment interest to the prevailing party in the event of an action to recover wages brought by private individuals.

C. California Labor Code Section 221

13. Labor Code Section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by unauthorized deductions of employees' wages or recovery after payment of the wage. In referring to "wages" paid, Section 221 prohibits

an employer from collecting or receiving wages "that have already been earned by performance of agreed-upon requirements." (*Steinhebel v. Los Angeles Times Communications*, (2005) 126 Cal.App.4th 696, 707.)

D. California Labor Code Section 226

14. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, the precise, actual number of hours and minutes worked by a non-exempt employee must be accurately itemized on each pay statement. If an employer knowingly and intentionally fails to comply with this section, it is liable for the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000 per employee.

E. California Labor Code Section 226.7

15. Labor Code Section 226.7 provides that no employer shall require any non-exempt employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. This section also provides that if an employer fails to provide a non-exempt employee a 30 minute meal period and/or 10 minute rest periods in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided and one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period is not provided.

F. California Labor Code Section 510

16. Labor Code Section 510 requires the payment of overtime to nonexempt employees at the rate of 1 ½ times their regular rate of pay for all hours worked in excess of eight (8) hours per day and all hours worked in excess of forty (40) hours per workweek, and payment of overtime to nonexempt employees at the rate of two times the regular rate of pay for all hours in excess of twelve (12) hours per day and all hours worked excess of eight hours on the seventh day worked in any work week.

G. California Labor Code Section 512

17. Labor Code Section 512 provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

H. California Labor Code Section 2698 *et seq.*

18. Labor Code Sections 2698 and 2699 are known as the "Labor Code Private Attorney General Act of 2004." Labor Code Section 2699 allows for the recovery of civil penalties for *any* violation of the Labor Code through a civil action brought by an aggrieved employee. "An aggrieved employee" is defined in Labor Code Section 2699 as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

19. Labor Code Section 2699 provides that an aggrieved employee may recover civil penalties in a civil action filed on behalf of himself or herself and other current or former employees against whom *one or more* of the alleged violations were committed. Labor Code Section 2699 also provides that "nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section."

I. Industrial Wage Order 4-2001 (Title 8, California Code of Regulations, § 11040)

20. Industrial Wage Order 4-2001 (and its predecessors), governing "Professional, Technical, Clerical, Mechanical and Similar Occupations," is the applicable wage order in this action. Industrial Wage Order 4-2001, which has been enacted into California's regulatory law as

Title 8, California Code of Regulations, § 11040, provides that employers must keep accurate time records showing when employees begin and end each meal period [subsection (7)(A)(3)]. In addition, the wage order provides that every employer shall permit all employees to take rest periods in the middle of each work period. The authorized rest period is to be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. [subsection (12)(A)]. The regulation also defines an "employer" as "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

J. California Business & Professions Code Section 17200 et seq.

21. California Business & Professions Code § 17200 defines unfair competition to include "unlawful, unfair or fraudulent business practices."

22. California Business & Professions Code § 17203 provides that "[t]he court may make such orders or judgments…as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore any person in interest any money or property, real or personal, which may have been acquired by means of unfair competition."

23. California Business & Professions Code § 17204 provides for suits for injunctive relief, restitution and disgorgement of profits.

CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Eighth Causes of Action of this suit as a class action pursuant to California Code of Civil Procedure § 382, on behalf of all individuals employed by DEFENDANT in the State of California in hourly, non-exempt positions during the relevant time period. This action is also brought for the benefit of the general public.

25. The putative classes PLAINTIFF will seek to certify are currently composed of and defined as follows:

a. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who were employed by SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2003 and the present (hereinafter, "the CLASS").**

b. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who separated their employment with SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2004 and the present (hereinafter, "the SUBCLASS.")**

26. Numerosity: The potential quantity of members of the CLASS and SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and unpractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASS and SUBCLASS is currently unknown to PLAINTIFF; however, it is estimated that there are at least 50,000 members in the CLASS and at least 10,000 members in the SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of DEFENDANT'S records.

27. Typicality: The claims of PLAINTIFF are typical of the claims of all members of the CLASS and SUBCLASS mentioned herein because all members of the CLASS and SUBCLASS sustained injuries and damages arising out of DEFENDANT'S common course of conduct in violation of California wage and hour law, and the injuries and damages of all members of the CLASS and SUBCLASS were caused by DEFENDANT'S wrongful conduct in violation of California statutory and regulatory law, as alleged herein.

28. Adequacy: PLAINTIFF is an adequate representative of the CLASS and SUBCLASS and will fairly protect the interests of the members of the CLASS and SUBCLASS, and has no interests antagonistic to the members of the CLASS and SUBCLASS, and will

vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

29. Superiority. The nature of this action and the nature of the laws available to PLAINTIFF make the use of the class action format a particularly effective and appropriate procedure to afford relief to PLAINTIFF for the wrongs alleged herein:

a. This case involves large corporate Defendants and a large number of individual class members with common issues of law and fact. According to DEFENDANT'S website, www.spherion.com, DEFENDANT employs "[a]pproximately 300,000" employees "making Spherion one of the top employers in North America;"

b. If each individual member of the CLASS and SUBCLASS were required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because DEFENDANT would be able to exploit and overwhelm the limited resources of each member of the CLASS and SUBCLASS with DEFENDANT'S vastly superior financial and legal resources.

c. Requiring each individual member of the CLASS and SUBCLASS to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the CLASS and SUBCLASS who would be disinclined to pursue an action against DEFENDANT because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well being;

d. Proof of a common business practice or factual pattern, of which the members of the CLASS and SUBCLASS experienced, is representative of the CLASS and SUBCLASS herein and will establish the right of each of the members of CLASS and SUBCLASS to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the CLASS and SUBCLASS, even if possible, would create a substantial risk of inconsistent and varying verdicts or adjudications with respect to the individual members of the CLASS and SUBCLASS against DEFENDANT, which would establish potentially incompatible standards of conduct for DEFENDANT and/or legal determinations with respect to individual members of the CLASS and SUBCLASS.

30. Existence and Predominance of Common Questions of Fact and Law: There are common questions of fact and law as to the members of the CLASS and SUBCLASS, which predominate over questions affecting only individual members of the CLASS and SUBCLASS including, without limitation:

a. Whether the members of the CLASS were subjected to unauthorized and illegal deduction of their earned wages;

b. Whether the members of the CLASS were expected, required, permitted and/or suffered to work overtime hours on a regular basis;

c. Whether the members of the CLASS were paid overtime compensation in accordance with California statutory and regulatory law;

d. Whether the members of the CLASS were provided with 30-minute meal breaks;

e. Whether DEFENDANT has failed to keep accurate time records showing when members of the CLASS begin and end each meal break;

f. Whether the members of the CLASS were provided with 10-minute rest periods;

g. Whether the members of the SUBCLASS received all compensation owed and due at the time of their separation of employment;

h. Whether the members of the SUBCLASS are entitled to seek recovery of penalties pursuant to Labor Code § 203;

i. Whether DEFEDANT properly itemized the wage statements of the members of the CLASS;

j. Whether DEFENDANT'S conduct constituted unfair or unlawful business practices within the meaning of Business & Professions Code § 17200 *et seq.*;

k. Whether the members of the CLASS and SUBCLASS are entitled to compensatory damages, and if so, the means of measuring such damages;

l. Whether the members of the CLASS and SUBCLASS are entitled to injunctive relief;

m. Whether the members of the CLASS and SUBCLASS are entitled to restitution;

n. Whether the members of the CLASS and SUBCLASS are entitled to disgorgement of profits;

o. Whether DEFENDANT is liable for pre-judgment interest; and

p. Whether DEFENDANT is liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION
(Unlawful Deductions of Wages Earned in Violation of
California Labor Code Sections 204 & 221)

(On Behalf of the CLASS)

31. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

32. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of deducting, collecting and/or receiving wages earned by members of the and CLASS. As a result, members of the CLASS have not been paid all wages earned in performing work for DEFENDANT.

33. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT was not authorized, required nor empowered to deduct, collect and/or receive wages from the members of the CLASS pursuant to state or federal law, nor express authorization of the members of the and

CLASS, in writing, to cover insurance premiums, hospital or medical dues, nor pursuant to an enforceable and lawful wage agreement or statute.

34. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT'S regular practice of deducting, collecting and/or receiving wages earned by the members of the CLASS violates California Labor Code sections 204 and 221.

35. As a result of the actions of DEFENDANT, in deducting, collecting and/or receiving wages earned by the members of the CLASS, members of the CLASS were damaged by not receiving wages that they should have received. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid wages, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code sections 218, 218.5 & 218.6.

SECOND CAUSE OF ACTION
(Failure to Pay Overtime Compensation in Violation of
California Labor Code Sections 510 & 1194)

(On Behalf of the CLASS)

36. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

37. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of requiring, suffering or permitting members of the CLASS to work hours in excess of eight hours per day and/or 40 hours per week.

38. The laws of the State of California require employers, such as DEFENDANT, to pay overtime compensation to all non-exempt employees. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are not exempt from overtime pay requirements under California law. PLAINTIFF further alleges that all members of the CLASS have been classified by DEFENDANT as non-exempt, hourly employees.

39. As a result of the actions of DEFENDANT in failing and/or refusing to pay overtime compensation, members of the CLASS were damaged by not receiving overtime compensation which they should have received, but did not receive. Members of the CLASS are

therefore entitled to compensation in an amount to be proven at trial for unpaid overtime, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION

(Failure to Provide 30-Minute Employee Meal Period)

(On Behalf of the CLASS)

40. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

41. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than five hours in a day without being provided with a thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties. DEFENDANT also promulgated and enforced policies under which members of the and CLASS regularly worked more than ten hours in a day without being provided with a second thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties.

42. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times, DEFENDANT has failed to maintain accurate records of when members of the CLASS begin and end each meal period.

43. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each work shift lasting more than five hours during which members of the CLASS were not provided with one or more thirty minute meal periods.

44. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

(Failure to Allow 10-Minute Employee Rest Periods)

(On Behalf of the CLASS)

45. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

46. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than four hours per day without being allowed one or more paid rest periods of at least ten minutes during which the members of the CLASS were relieved of all of their respective work duties.

47. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period during which members of the CLASS were not provided with one or more ten minute rest periods.

48. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FIFTH CAUSE OF ACTION

(Failure to Reimburse for Reasonable Business Expenses in Violation of Labor Code § 2802; Cal. Code Regs., Title 8 § 11040 sections 8 & 9)

(On Behalf of the CLASS)

49. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

50. Labor Code Section 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Title 8 CCR § 11010(8) provides that "No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of

equipment, unless it can be shown that the shortage, breakage, or loss is cause by a dishonest or willful act, or by the gross negligence of the employee."

51. During the applicable statutory period, PLAINTIFF and the members of the CLASS incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of DEFENDANT, including but not limited to travel expenses, gas charges, mileage, cell phone charges, laptop computer usage, and other similar expenditures.

52. PLAINTIFF is informed and believes that pursuant to California Labor Code § 2802 and Title 8 CCR § 11040(8) & (9), PLAINTIFF and the members of the CLASS are entitled to recover their un-reimbursed expenditures and losses, interest thereon and attorneys' fees and costs, in amounts to be proven at trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Properly Itemized Wage Statements in Violation of Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

(On Behalf of the CLASS)

53. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

54. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, gross wages earned, the precise, actual number of hours and minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the pay period, the name of the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period must be accurately itemized on each pay statement. Furthermore, the deductions made from payment of wages must be recorded, properly dated, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

55. During the applicable statutory period, DEFENDANT has routinely failed to provide the members of the CLASS, at the time of each payment of wages, an itemized statement

in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. DEFENDANT'S failure to provide itemized statements to the members of the CLASS has been knowing and intentional and was in clear violation of Labor Code § 226(a). In direct violation of California law, DEFENDANT has refused to provide the members of the CLASS with any record or documentation of expenses deducted from such employees' earnings.

56. The members of the CLASS have suffered injuries as a result of the knowing and intentional failure of DEFENDANT to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that DEFENDANT'S failure to provide Class Members with an itemized wage statement made it impossible for the members of the CLASS to be aware that unlawful deductions were being made from their earnings, that they were not being paid all wages earned, and that in certain instances their wages fell below the statutory hourly minimum wage and overtime wage rates.

57. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT'S knowing and intentional failure to furnish the members of the CLASS with itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code § 226(e) entitles PLAINTIFF and the members of the CLASS to recover the greater of their actual damages caused by DEFENDANT'S violations, or $50 per employee for the initial pay period in which the violation occurred, and $100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of $4,000 per employee.

SEVENTH CAUSE OF ACTION

(Failure to Pay Compensation at the Time of Termination in Violation of
California Labor Code Sections 201-203)

(On Behalf of the SUBCLASS)

58. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

59. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT has willfully failed and has refused to pay all compensation and wages due to members of the SUBCLASS upon their separation of employment.

60. DEFENDANT'S failure to timely pay compensation and wages to members of the SUBCLASS at the time of their separation of employment is willful. As a result, DEFENDANT is liable to members of the members of the SUBCLASS for waiting time penalties under California Labor Code Section 203 in an amount to be ascertained at trial.

EIGHTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)

(On behalf of PLAINTIFF, the CLASS, and the General Public)

61. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

62. Within each of the four years prior to the commencement of this action, PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT has unlawfully failed to pay hourly wages and overtime wages to Class Members, including Plaintiff, in violation of Labor Code §§ 204, 221 510, 1194, 1197 and 1197.1; unlawfully failed to provide meal breaks, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code §§ 226.7 and 512; unlawfully failed to provide rest periods, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code § 226.7; unlawfully failed to reimburse Class Members, including PLAINTIFF, for reasonable business expenditures in violation of Labor Code § 2802; and unlawfully failed to provide properly itemized wage statements to Class Members, including PLAINTIFF, in violation of Labor Code § 226.

63. By committing the alleged acts and/or omissions as described in this Complaint, DEFENDANT has engaged, and continue to engage, in unlawful and/or unfair business practices within the meaning of California Business & Professions Code § 17200 *et seq.*

64. PLAINTIFF alleges, on the basis of information and belief, that as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint, DEFENDANT has unlawfully earned profits from such unlawful and/or unfair business practices.

65. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.*

Thus, on behalf of members of the CLASS, and on behalf of the general public, PLAINTIFF seeks injunctive relief, restitution (to members of the CLASS) of all unlawfully withheld funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained by DEFENDANT as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint.

66. PLAINTIFF is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, DEFENDANT will continue to engage in the alleged acts and/or omissions as described in this Complaint.

NINTH CAUSE OF ACTION

(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)

(On Behalf of PLAINTIFF, All Other Aggrieved Employees and the State of California)

67. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

68. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, DEFENDANT has violated, and continue to violate, several provisions of the California Labor Code, including but not limited to:

i. Sections 201 through 203 (Failure to Pay Compensation at the Time of Separation of Employment);

ii. Section 204 (Failure to Pay Wages Due & Owed);

iii. Section 221 (Unlawful Deductions of Wages Earned);

iv. Section 226 (Failure to Maintain Adequate Wage Statements);

v. Section 226.7 (Failure to Compensate for Missed Meal Break);

vi. Section 226.7 (Failure to Compensate for Missed Rest Periods);

vii. Section 510 (Failure to Pay Overtime);

viii. Section 512 (Failure to Provide Meal Breaks);

ix. Section 1174 (Failure to Maintain Accurate Time Records);

x. Section 1194 (Failure to Pay Overtime Compensation);

xi. Section 2802 (Indemnification of Employees for Work-Related Expenditures).

69. Pursuant to Labor Code Section 2699, PLAINTIFFS bring this cause of action on behalf of themselves and all other current or former employees of DEFENDANT against whom one or more of the alleged violations was committed and/or is being committed ("aggrieved employees," as defined by Section 2699(c)).

70. Pursuant to Labor Code Section 2699, PLANTIFF seeks to recover from DEFENDANT civil penalties for *each* Labor Code violation, to be calculated at the rate at which the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees.

71. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code that do not specifically provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, PLAINTIFF seeks to recover from Defendants civil penalties for *each* Labor Code violation at the following rate: one hundred dollar ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

72. Pursuant to Labor Code Section 2699, PLAINTIFF seeks an award of reasonable attorney's fees and costs for bringing this cause of action on behalf of themselves and other past and present aggrieved employees of DEFENDANT against whom one or more of the alleged violations was committed.

73. In compliance with Labor Code Section 2699.3, on September 25, 2007 PLAINTIFF provided DEFENDANT and the California Labor & Workforce Development Agency ("LWDA") with written notice, via certified mail, of the specific provisions of the Labor Code alleged to have been violated by Defendants, and the facts and theories to support the allegations.

74. On October 17, 2007 the LWDA notified PLAINTIFF's counsel that it had received PLAINTIFF's notice of the alleged Labor Code violations. The LWDA has designated

PLAINTIFF's Labor Code allegations against DEFENDANT as "LWDA No. 2750."

75. More than 33 days have elapsed since PLAINTIFF notified the LWDA, via certified mail, of the specific provisions of the Labor Code alleged to have been violated by DEFENDANT. To date, the LWDA has not notified PLAINTIFF that it intends to investigate the alleged violations contained in PLAINTIFFS' notice.

76. Pursuant to Section 2699.3(a)(2)(A), PLAINTIFF may commence a civil action against DEFENDANT for civil penalties on behalf of themselves, the State of California and DEFENDANT's other current and former aggrieved employees.

77. Pursuant to Section 2699.3(a)(2)(C), PLAINTIFF may **as a matter of right**, without leave of court, amend the original complaint to bring this cause of action under the Labor Code Private Attorneys General Act of 2004.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself, all others similarly situated, and on behalf of the general public, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and SUBCLASS, appointing the named PLAINTIFF as representative of all others similarly situated and appointing the law firm(s) representing the named PLAINTIFF as counsel for members of the CLASS;

As to the First Cause of Action for Unlawfully Deducted Wages on Behalf of the CLASS

2. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S unlawful deduction of wages earned by members of the CLASS;

3. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

4. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

5. For such other and further relief as the court deems just and proper;

As to the Second Cause of Action for Overtime Compensation on Behalf of the CLASS

6. For compensatory damages according to proof, including all wages due and owing

as a result of DEFENDANT'S failure to pay overtime compensation to members of the CLASS;

7. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 1194;

8. For attorneys' fees and costs pursuant to Labor Code Section 1194, or as otherwise permitted by statute;

9. For such other and further relief as the court deems just and proper;

As to the Third Cause of Action for Failure to Allow 30-Minute Employee Meal Periods on Behalf of the CLASS

10. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each work shift in which such member worked more than five hours without being permitted to take the required meal period;

11. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

12. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

13. For such other and further relief as the court deems just and proper;

As to the Fourth Cause of Action for Failure to Allow 10-Minute Employee Rest Periods on Behalf of the CLASS

14. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each four hour work period in which such member worked without being permitted to a paid rest period;

15. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

16. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

17. For such other and further relief as the court deems just and proper;

As to the Fifth Cause of Action for Indemnification of Employees for Expenditures or Losses in Discharge of Duties or Obedience to Directions on Behalf of the CLASS

18. For compensatory damages according to proof, including but not limited to expenditures, losses, lost wages, earnings and other employee benefits and all other sums of money owed to each member of the CLASS incurred during the proper discharge of their duties for DEFENDANT, or during the course and scope of their employment for DEFENDANT.

19. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289;

20. For attorneys' fees and costs pursuant to Labor Code § 2802 or as otherwise permitted by statute;

21. For such other and further relief as the court deems just and proper;

As to the Sixth Cause of Action for Improperly Itemized Wage Statements on Behalf of the CLASS

22. For compensatory damages or minimum statutory damages of $50 for the first violation and $100 for each subsequent violation pursuant to Labor Code Section 226(e);

23. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 226(e);

24. For attorneys' fees and costs pursuant to Labor Code Section 226(e) or as otherwise permitted by statute;

25 For such other and further relief as the court deems just and proper;

As to the Seventh Cause of Action for Waiting Time Penalties on Behalf of the SUBCLASS

26. For statutory penalties pursuant to Labor Code Section 203;

27. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

28. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

29. For such other and further relief as the court deems just and proper;

As to the Eighth Cause of Action for Unlawful and Unfair Business Practices on Behalf of the CLASS and the General Public

30. For an Order requiring DEFENDANT to identify each of the members of the CLASS by name, home address and home telephone number;

31. For an Order compelling DEFENDANT to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS who have suffered as a result of DEFENDANT'S unlawful and unfair business practices alleged herein;

32. For an order compelling DEFENDANT to disgorge and pay over to each of the members of the CLASS all profits and savings resulting from DEFENDANT'S unlawful and unfair business practices alleged herein;

33. For issuance of a permanent injunction enjoining DEFENDANT from continuing to engage in the unlawful and unfair business practices alleged herein;

34. For interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 204.6;

35. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 1194 & 2802, Code of Civil Procedure Section 1021.5 and as otherwise permitted by statute;

36. For such other and further relief as the court deems just and proper;

As to the Ninth Cause of Action for Civil Penalties, under Labor Code Private Attorney General Act of 2004, on Behalf of the PLAINTIFF, all other current and former aggrieved employees, and on behalf of the State of California

37. For civil penalties, according to the method of calculations set forth in Labor Code Section 2699;

38. For attorneys' fees pursuant to Labor Code Section 2699 or as otherwise permitted by statute;

39. For costs of suit incurred herein;

40. For such other and further relief as the court deems just and proper

DATED: December 19, 2007

LAW OFFICES OF DAVID A. HUCH

s/ David A. Huch________________
DAVID A. HUCH

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